

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BARBARA A. WILHELM,	:	
Plaintiff	:	
	:	
v.	:	NO. 1:CV-01-1057
	:	
COMMONWEALTH OF PA.;	:	(JUDGE RAMBO)
PENNSYLVANIA STATE POLICE;	:	
COLONEL PAUL J. EVANKO,	:	
COMMISSIONER; LIEUTENANT	:	
COLONEL THOMAS K. COURY; and	:	
CAPTAIN MICHAEL. D. SIMMERS,	:	
Defendants	:	

**DEFENDANTS' MOTION FOR RECONSIDERATION
OF ORDER GRANTING POST JUDGMENT INTEREST**

Pursuant to Local Rule 7.10, defendants respectfully move the Court to reconsider and amend its March 26, 2004 order awarding plaintiff post judgment interest on her award of costs and attorneys fees, to conform with the language of 28 U.S.C. §1961. In support of this motion, defendants state as follows:

1. This is a Title VII action alleging that plaintiff was dismissed in retaliation for complaining about sex discrimination.
2. A jury entered a verdict in favor of plaintiff on September 11, 2002 and awarded compensatory damages.
3. On February 5, 2003, the Court awarded plaintiff an additional \$27,148.05 in front pay.

4. On the motion of plaintiff and pursuant to 28 U.S.C. §1961, the Court awarded interest on the compensatory damages at a rate of 1.7% or \$11.64 per day and on the front pay award at a rate of 1.32% or \$.98 a day (Order of April 9, 2003).

5. On August 15, 2003 the Court granted plaintiff's petition for attorney's fees and costs and awarded \$190, 232 in attorneys's fees and \$27,907 in costs .

6. Plaintiff subsequently moved to compel payment of the judgment and payment of the award of attorney's fees and costs. Plaintiff also sought interest on the award of costs and fees.

7. On March 26, 2004, this Court granted plaintiff's motion and ordered defendants to pay the judgment plus interest and attorney's fees and costs plus interest on or before April 15, 2004.

8. The Court awarded interest on the costs and attorney's fees at a rate of 1.26% *per day* from the date of award until payment.

9. Defendants now ask the court to reconsider its order regarding interest on the award of fees and costs because it does not comply with 28 U.S.C. §1961.

10. Pursuant to 28 U.S.C. §1961(a), post judgment "shall be allowed on any money judgment in a civil action recovered in a district court."

11. Subsection (a) goes on to provide that the interest "shall be calculated...at rate equal to the weekly average 1-year constant maturity Treasury

yield as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.”

12. The parties agree that 1.26% is the appropriate rate.

13. Defendants disagree with the Court’s order to the extend that it orders interest to be calculated at that rate *per day*.

14. The interest rate as published by the Federal Reserve System is an annual rate not a daily rate.

15. Pursuant to §1961(b), the annual rate is to be applied and then interest is to be computed for each day the principal is unpaid.

16. Defendants believe this is the calculation the Court performed in awarding interest of \$12.62 per day on plaintiff’s judgment of \$280,020.17.

17. Defendants respectfully submit the same approach is required in calculating the interest on the award of attorneys’ fees and costs.

18. Using that approach, defendants calculate the daily interest on plaintiff’s award of attorney’s fees as \$7.53 and the daily interest on the award of costs as \$.96.

WHEREFORE, defendants respectfully request the Court to reconsider its order of March 26, 2004 and award plaintiff interest on her award of attorney’s fees and costs at an annual rate of 1.26% , that is \$7.53 per day on the award of fees and \$.96 on the award of costs. Defendants further request that the Court vacate the

portion of March 26, 2004 order that requires payment of interest on fees and costs by April 15, 2004, pending the disposition of this motion and the establishment of a new deadline for payment of the interest.

Respectfully submitted,

GERALD J. PAPPERT
Attorney General

BY: /s/ Susan J. Forney
SUSAN J. FORNEY
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DATED: April 5, 2004

CERTIFICATE OF SERVICE

I, **SUSAN J. FORNEY**, Chief Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on April 5, 2004, I caused to be electronically filed the foregoing document entitled **Defendants' Motion for Reconsideration of the Order Granting Post Judgment Interest**, and by serving same upon the following via electronic mail:

**Nathan C. Pringle, Jr., Esquire
3601 North Progress Avenue, Suite 200
Harrisburg, PA 17110**

/s/ Susan J. Forney
**SUSAN J. FORNEY
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I.D. No. 27744**